



May 3, 2010

Ms. Mary F. Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Sent via email

Re: Comments on Proposed Rule 742, Regulatory Flexibility Program

Dear Ms. Rupp:

I would like to voice my opposition to the proposed removal of the 5% fixed asset waiver found within the current Regulatory Flexibility Program (RegFlex). I would instead be in favor of a modification to the "unlimited" fixed asset ratio under RegFlex. Placing such a strict and one dimensional rule on well performing institutions would inhibit their progress as well as create an unnecessary and unwelcome burden on both the institution as well as the NCUA. I would recommend that a more reasonable approach would be to provide those credit union's who qualify for RegFlex, a separate fixed asset limit than those credit unions not under RegFlex. An example would be to allow RegFlex CU's a fixed asset limit of 8%. This allows for some flexibility while at the same time managing the risk (not eliminating the risk).

Historically speaking, I have no information available to me which would indicate when (what year) the 5% cap was added to the NCUA's Rules and Regulation. As best, I know it was in existence during the early 1990's. In relation to that time period, it is possible that having a 5% fixed asset cap made sense. The costs associated with purchasing land and constructing a building were exponentially less than they are today. Therefore, this rule would not have been as prohibitive back then, as it would be today.

As an example, in 1994 when our credit union had \$42 million in assets, we purchased land and built a 10,000 square foot headquarter facility for a total cost of \$1.8 million. This investment provided us with a building that will take us 20-25 years to outgrow. If you were to calculate the fixed asset ratio back then, that purchase took us to the brink of the 5% cap, but the building was way more than sufficient for our needs at that time.

Now move into the year 2010 (16 years later) and see what you can get in land and buildings for \$1.8 million. At best, in our geographic location, you might be able to open a very small branch office with about 2,000 to 2,500 square feet. Fortunately, we are in a part of the country where the cost of real estate is much less than many other parts of the country.

In addition to investments into real estate, I'm sure that when the 5% rule was implemented, it wasn't a necessity to invest large sums of money into technology, as we have today. Consider the sums of money required for hardware, software, intrusion protection, systems conversions, security systems, backup generators, etc, etc. These costs all get included into the 5% cap limit.

Our credit union today is close to \$70 million in assets. We have a fixed asset ratio of around 3%. It has been 16 years since our last building went up. We are in the process of looking to expand by opening a new facility to service our membership and our community. With the costs required to buy land and build a 3,000 square foot building, we will be going over the 5% cap by a small margin. Under the proposed change to RegFlex, we would be required to ask for permission to move forward with this project. As a matter of fact, if the current proposal gets passed, I can assure you that every time we want to expand the number of credit union facilities we have in the future, we will be required to come back to the NCUA for permission.

In a time when many credit unions are struggling to make ends meet or even survive, it can be tempting to be over reactive in finding limits to stop the repeat of today's problems. Requiring the 5% limitation on all credit unions is an attempt to totally eliminate the problem. But as is the job of every credit union, our job is to manage our risk, not to eliminate the risk. Without risk there is no room for success or even survival.

The four examples provided in the proposed rules, which are supposed to justify the imposition of a 5% fixed asset cap on all credit unions, are extreme examples of abuse. They are certainly not the norm. Any credit union whose fixed asset ratio jumps to three times the 5% cap is asking for trouble, no matter what the economic times are like.

The restriction that the 5% cap places on a well performing credit union inhibits growth. If this proposal goes through as suggested, the only results will be additional work and frustration for all those that have to request an exception to the rule (which will be most institutions).

Issues and thoughts to consider:

- Assuming that the average cost of land and a new branch office is \$2.5 million today, all Credit Unions that are under \$55 million in assets will need approval from the NCUA in order to build a branch. The last time I checked, that adds up to approximately 75% of all Credit Unions.
- Other Real Estate Owned is included in the fixed asset cap ratio. With the number of foreclosures the industry is seeing today, how many additional Credit Unions will be pushed over that 5% limit (at least temporarily). Will that put a temporary stop to any building projects or capital improvements that are currently underway?
- Under this proposed change, once a well running Credit Union receives NCUA's permission to build a branch and go beyond the 5% limit, how much flexibility will be given for that credit union to spend money on unforeseen things such as major hardware

and software upgrades; ATM equipment that fails; HVAC issues that appear unexpectedly, etc?

- Where does the 5% limit come from? Why isn't it 6% or 7% or 8%?
- Wouldn't it be more prudent to focus our attention on a credit union's percentage of non-earning assets-to-total assets instead (of which fixed assets are included)? Isn't that really the more important issue?
- If we have a well performing credit union (as determined by the NCUA) with a 4% fixed asset ratio and have respectable earnings, why do you want to require us to seek permission to open another branch facility? In this scenario and assuming a new facility costs \$2.5 million, unless I have assets over \$250 million, I will be required to ask for an exception to the 5% rule if this proposed ruling takes place.

In summary I believe that the 5% fixed asset cap needs to be looked at closely to determine its relevance in today's environment. The amount of additional fixed assets required today that were not required when the rule was originally issued (i.e. technology costs) along with the money required to build a branch facility today versus decades ago, make it more and more difficult to stay under that magical 5% limit.

Any credit union that is looking to grow and expand (which is what we would all like to be able to do) will continuously be bumping against the 5% fixed asset cap. Why do we want to complicate the expansion process with one more hurdle to overcome?

In regards to the examples given as justification for clamping down on all credit unions with a 1 or 2 CAMEL rating, I believe there is an alternative that can address those extreme situations without significantly impacting the entire industry. For credit unions that have shown they are eligible for RegFlex, why not move their fixed asset limits to a higher limit; such as 8 or 9%. This would help eliminate the abusive examples that were given for removing the cap from RegFlex, while also rewarding the strong performing credit unions.

Thank you for this opportunity to provide comments on this very important proposal. Please feel free to contact me at 717-840-4981 if you have any questions or if you would like to discuss the contents of this letter.

Sincerely,



Timothy K. Ames
President & CEO
Heritage Valley FCU
York, Pennsylvania 17402